# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## CRIMINAL APPEAL No. 920 of 1984

**For Approval and Signature:**

**HON'BLE MR.JUSTICE A.R.DAVE**
**HON'BLE MR. JUSTICE MD SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**STATE OF GUJARAT - Appellant(s)**

**Versus**

**LALJI SUJARAM BHAT & 1 - Opponent(s)**

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**Appearance :**
MR S.S. PATEL, A.P.P. for Petitioner No(s).: 1.

MR US BRAHMBHATT for Respondent No(s).: 1,2.
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**CORAM : HON'BLE MR.JUSTICE A.R.DAVE**
**and**
**HON'BLE MR. JUSTICE MD SHAH**

**Date : 13/07/2005**

**ORAL JUDGMENT**

**(Per : HON'BLE MR.JUSTICE A.R.DAVE)**

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1. This is an appeal against the judgement and order dated 6th April, 1984 passed in Sessions Case No. 59/1983 by the Sessions Judge, Kutch at Bhuj. Before the Trial Court, the accused were charged under the provisions of Sections 302 and 201 read with Section 114 of the Indian Penal Code. By virtue of the impugned judgement, the Trial Court has acquitted the accused of the charges under Section 302 read with Section 114 of the Indian Penal Code, but they have been convicted for commission of an offence under the provisions of Section 201 of the Indian Penal Code. Respondent no. 1 accused has been sentenced to Rigorous Imprisonment for five years whereas respondent no. 2 accused has been sentenced to undergo Simple imprisonment for two years. Being aggrieved by the aforestated judgement and order, the State has filed this appeal.

2. The case of the prosecution before the Trial Court was that on or about 15th July, 1983, accused no. 1, with an axe, and accused no. 2, with a stick, had caused injuries to Babu Ladhuram Bhat with an intention to commit murder and as a result of the said injuries, Babu Ladhuram Bhat died. Upon knowing that murder had been committed, for avoiding the punishment, they destroyed the evidence of the murder by burying the dead body of deceased Babu Ladhuram Bhat and thereby they had committed an offence under the provisions of Section 201 of the Indian Penal Code.

3. The facts giving rise to the aforestated criminal proceedings, as narrated by the prosecution, in a nutshell, are as under;

   3.1. Accused no. 2 was the wife of the deceased,

whereas accused no. 1 was the nephew of the deceased. Accused nos. 1 and 2 were also first cousins. Accused No. 1, being nephew of the deceased, was staying with the deceased and his wife, accused no. 2. Accused nos. 1 and 2 had an illicit relation and once having been caught red handed by the deceased, the deceased wanted accused no. 1 to leave his house at once. However, accused no. 2, being interested in continuing her relationship with accused no. 1, tried to persuade her husband to permit accused no. 1 to stay with them till accused no. 1 got married. As the deceased never wanted accused no. 1 to stay with him due to his illicit relations with his wife, the deceased had some altercation with accused no. 2 in presence of accused no. 1. Accused no. 2, being more interested in staying with accused no. 1, started beating the deceased with a stick and also encouraged accused no. 1 to kill her husband. Thereafter, accused no. 1, with an axe and accused no. 2, with a stick, had caused serious injuries to the deceased, which ultimately resulted into his death. Upon knowing that they had committed murder of the deceased, so as to avoid the dire consequences, they decided to destroy all evidence, and, therefore, in a veranda near the temple, where the deceased was a pujari, the accused had dug a pit and buried the dead body of Babu Ladhuram Bhat.

3.2. So as to see that the fact with regard to the murder is concealed, accused no. 1 went to Bhuj Post Office on 26th June, 1983 and sent a telegram to Shri Bhaiyaji Jagam of Village Baroi stating that Babu Ladhuram Bhat had expired at Ahmedabad. Being illiterate, accused no. 1, had requested Shri Karim Mamad (P.W. No. 9) to fill up the telegram form

containing the aforestated message and he had put his thumb mark at the place where the sender of the telegram was supposed to sign. The said telegram was sent on 26th July, 1983.

3.3.Thereafter, another telegram was sent by accused no. 2 in a similar manner, but with a message that all obsequial ceremonies, including cremation of Babu Ladhuram Bhat had been concluded at Ahmedabad. As stated earlier, accused no. 1 had put his thumb mark on the second telegram form also.

3.4.The said telegrams were received by Shri Bhaiyaji Jagam of village Baroi. Upon reading the said telegrams and getting the news, it was made known to the concerned persons that Babu Ladhuram Bhat had expired, but somehow there was some suspicion about missing of Babu Ladhuram and, therefore, some of the villagers had gone to Mundra Police Station to report that Babu Ladhuram was missing. After commission of the offence, accused no. 1 wanted to destroy remaining evidence, which was in the nature of some clothes of the deceased and for that purpose he wanted to go elsewhere to dispose of the same. While on his way, because of the guilt, which he was having, he was little bit disturbed when a police constable looked at him and, therefore, he was interrogated by the constable and upon searching his belongings, it was found that he was having blood stained clothes and, therefore, he was taken to Bhachau police station, where, upon further interrogation, he narrated the entire episode. Thereupon, accused no. 1 had filed an FIR and investigation had commenced in pursuance of the said FIR.

3.5.Accused no. 1 thereafter stated before the police that with help of accused no. 2 he had buried the dead body of Babu Ladhuram Bhat near the temple of village Khari Mithi and had also stated as to where the axe had been hidden by him. By drawing discovery panchnamas, the dead body and the axe had been discovered.

3.6.At the instance of accused no. 2, i.e. the wife of the deceased, the stick used by her had also been discovered under a discovery panchnama (Exh 23).

3.7.As the dead body was found in a decomposed state, a Medical Officer was summoned and upon postmortem (Exh 48), it was found that there were severe injuries on the skull of the deceased and ulna and radius were also fractured.

4.After appreciation of evidence, the Trial Court did not agree with the case of the prosecution that the accused had committed murder as there was no evidence to prove the said fact and, therefore, the accused were acquitted of the charge under the provisions of Section 302 of the Indian Penal Code. However, the Trial Court found that the accused had made an effort to destroy the evidence and, therefore, the accused had been held guilty of an offence punishable under the provisions of Section 201 of the Indian Penal Code.

5.Learned A.P.P. Shri Sudhansu Patel appearing for the appellant-State has vehemently submitted that upon appreciation of the evidence, it is very clear that the accused ought to have been punished for commission of an offence of murder under the provisions of Section 302 of the Indian Penal Code.

6.Learned A.P.P. Shri Sudhansu Patel has taken us through

the record so as to establish that this is a case where the accused must be held guilty of an offence punishable under the provisions of Section 302 of the Indian Penal Code. To support that, it has been submitted by him that it has been established by the evidence of finger print expert (Exh. 50) that the thumb mark on the telegram form was of accused no. 1. It has been submitted by him that the intention of accused no. 1 was to mislead the close relatives of the deceased and other villagers, by informing them that Babu Ladhuram Bhat had expired when he had been to Ahmedabad and, therefore, he had sent the telegraphic message to Shri Bhaiyaji Jagam so that people may know that Babu Ladhuram had already expired. Thereafter, another telegram was sent to the same person informing that the dead body of Babu Ladhuram Bhat had been cremated at Ahmedabad. Thus, he wanted to mislead the residents of village Khari Mithi and Baroi. The only relative of the deceased was Popatlal, his son. There was no reason for accused no. 1 to send such telegrams if there had not been any guilty mind behind his action.

7. It has been thereafter submitted by him that in pursuance of the statement made by both the accused, the dead body and the axe, which was used for the purpose of commission of the offence, had been discovered. It has been also submitted that there was no doubt with regard to identity of the dead body because the ring, which was being regularly worn by the deceased, was also discovered at the instance of the accused. It has been thereafter submitted by him that looking to the injuries inflicted on the deceased, as revealed from the postmortem report and the weapons,

which had been discovered, it is clear that the injuries inflicted upon the body of the deceased had been inflicted by the weapons, which were discovered at the instance of the accused.

8. Thus, looking to the behaviour of the accused and the evidence, which had been adduced before the Trial Court, and as complete chain of events leading to commission of the offence had been established by the prosecution, there was no reason for the Trial Court to acquit the accused of the charges under the provisions of Section 302 of the Indian Penal Code.

9. On the other hand, learned advocate Shri Brahmbhatt appearing for the accused has submitted that upon appreciation of the evidence, the Trial Court has rightly come to the conclusion that the accused could not have been convicted under Section 302 of the Indian Penal Code.

10. Learned advocate Shri Brahmbhatt has further submitted that being aggrieved by the punishment inflicted by the Trial Court for commission of offence under the provisions of Section 201 read with Section 114 of the Indian Penal Code, the accused had filed Criminal Appeal No. 698/1984. The said appeal had been summarily dismissed at the admission stage by this Court on 13th July, 1984. He has produced a copy of the order passed by this Court in the said appeal, and relying upon the observations made in the said judgement, it has been submitted by him that the Trial Court was absolutely justified in acquitting the accused under the provisions of Section 302 of the Indian Penal Code and the accused were rightly found guilty of the offence under the provisions of Section 201 of the Indian Penal

Code. Relying upon the findings arrived at in the said order, it has been submitted by him that only after proper appreciation of the evidence, this Court has confirmed the judgement, and, therefore, this appeal should not be allowed.

11.It has been submitted by him that as there was no eye witness to the incident, the prosecution must establish a foolproof case for conviction of the accused under the provisions of Section 302 of the Indian Penal Code by establishing a complete chain of events leading to commission of the offence. It has been submitted by him that if there is any doubt with regard to the accused having not committed the offence, the benefit of doubt must be given to the accused, and he has further submitted that the Trial Court has rightly given the benefit of doubt to the accused, because the prosecution could not establish its case beyond reasonable doubt.

12.It has been submitted by learned advocate Shri Brahmbhatt that except the statement made before the police, there is nothing to show that the death of the deceased was caused by accused no. 1 or accused no. 2. The learned advocate has reiterated the fact that there was no eye witness and except in the statement made before the police there is no evidence to implicate the accused, and only for that reason the Trial Court did not believe the case of the prosecution that murder was committed by the accused.

13.Upon hearing the learned advocates and upon going through the evidence, in the light of the submissions made by both the advocates, we find substance in what has been submitted by learned advocate Shri Brahmbhatt

appearing for the accused.

14. If one looks at the evidence, it cannot be disputed that accused no. 1 had successfully made an effort to misguide the residents of Khari Mithi by sending two telegrams to the effect that Babu Ladhuram Bhat had gone to Ahmedabad and upon his death in Ahmedabad, his dead body had been cremated there. His intention was very clear that he wanted to indirectly inform the people of Khari Mithi that they should not expect Babu Ladhuram Bhat to come to that village again. Thus, by burying the dead body in the precincts of the temple at Khari Mithi, he wanted to hide the heinous crime alleged to have been committed by him and accused no. 2. Thus, it is very clear that his intention was to see that the dead body of the deceased was hidden so as to see that the evidence of the offence committed under the provisions of Section 302 is destroyed. For the said purpose, the Trial Court has rightly held both the accused guilty of the offence under Section 201 of the Indian Penal Code. As stated hereinabove, there is no eye witness to the incident in question. The entire chain of events with regard to the offence could not be established by the prosecution for the purpose of proving that the offence under Section 302 had been committed by the accused. One thing is worth noting in this case. Clothes which had been discovered/recovered from accused no. 1 and which contained some blood stains, were found to be having blood of animals and not of human beings as per the report of experts of Forensic Science Laboratory (Exh. 76). We do not propose to make any further comment upon this fact.

15. We too made an effort to find out whether the chain,

which the prosecution wants to complete, can be in fact completed for the purpose of establishing that the accused had committed murder of Babu Ladhuram Bhat. Unfortunately, neither the prosecution could establish the said fact before the Trial Court by leading sufficient evidence nor the learned A.P.P. could establish the said fact before this Court.

16. It is a settled legal position that in a case where there is no eye witness, the entire chain of events with regard to commission of the offence must be established and it must be proved beyond reasonable doubt that a particular offence was committed by the accused. As the said chain of events could not be established in the instant case, in our opinion, the Trial Court was justified in acquitting the accused of the charge levelled against them under the provisions of Section 302 of the Indian Penal Code.

17. It is also pertinent to note that the impugned judgement has been confirmed by this Court in Criminal Appeal No. 698/1984. This is an additional factor in favour of the accused and therefore also we are slow to interfere with the judgement.

18. Even upon independent appreciation of evidence, we could not find anything, which can support the case of the prosecution and, therefore, the appeal is dismissed. Bail bond issued to the accused is ordered to be cancelled.

(ANIL R. DAVE, J.)

(M.D. SHAH, J.)

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